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# EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Written statement* submitted by South Asia Human Rights Documentation Centre, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Reluctant Referee: The National Human Rights Commission of India

Since the Vienna World Conference on Human Rights, many governments in the Asia-Pacific region have established national human rights institutions. Many are in the process of establishing one. A decade later, however, there is little to show for the effort. The established NHRIs have not demonstrated the required level of independence and forthrightness, and in some cases have even failed to fulfill basic functions such as enabling the implementation of judicial orders.

The National Human Rights Commission of India (NHRC) is a case in point.

On 2 November 1995, the NHRC filed a writ petition (No. 720 of 1995) with the Supreme Court of India against the State Government of Arunachal Pradesh for its repeated failure to respect the directives of the NHRC to protect the lives and liberties of the Chakmas and Hajongs. The Chakmas and Hajongs who had migrated to India in 1964 from then East Pakistan (now Bangladesh) have been facing institutionalised discrimination since their arrival. After coming to power in 1980, Arunachal Pradesh Chief Minister Gegong Apang barred the Chakmas and Hajongs from holding government jobs. In the 1990s, with his hold on the office of Chief Minister weakening, Apang attempted to stir up public hostility against the Chakmas to gain an edge over his political opponents. Through the use of administrative orders, Apang divested the Chakmas and Hajongs of basic facilities, and allowed the members of the All Arunchal Pradesh Students Union (APSU), an organisation which opposes granting of citizenship to the two communities, to launch violent attacks against them with impunity. Apang also mobilised the political parties in the state to demand the expulsion of the two communities from the state. In the face of the State Government's consistent flouting of NHRC directives, the NHRC approached the Supreme Court.

On 9 January 1996, the Supreme Court gave its judgement in the case of NHRC vs State of Arunachal Pradesh, issuing the following orders:

> - the first respondent, the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of para-military or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the second respondent, the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas;
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> - except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein;
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> - the quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma should be dealt with by the first respondent in accordance with law;
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> - the application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the Collector or the DC who receives them under the relevant rule, with or without enquiry, as the case may be, to the Central Government for its consideration in

> accordance with law; even returned applications shall be called back or fresh ones shall be obtained from the concerned persons and shall be processed and forwarded to the Central Government;
>
> - while the application of any individual Chakma is pending consideration, the first respondent shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf;

The intervention with the Supreme Court has been touted by the NHRC as "successful." However, five years after the judgement, not a single citizenship application has been processed. Instead, the Chakmas and Hajongs continue to be subjected to intimidation, harassment, torture and other abuses. They have been prevented from selling their products in the market. Members of the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) were beaten and falsely implicated in criminal cases. The District Commissioners continue to refuse to accept their citizenship applications, in clear contempt of the Supreme Court order.

The Chakmas and Hajongs have therefore submitted their applications to the Central Government of India. Over 4,000 applications have been submitted since 1997. Not a single application has been processed by the Central Government.

In addition to the Chakmas and Hajongs who arrived in 1964, there are nearly 35,000 persons from both communities who were born in India after 1964 and have been declared as citizens by birth under section 3(1)(a) of the Indian Citizenship Act 1955.[1] However, when they tried to register in the electoral rolls, the State Government officials refused to accept their applications.

The CCRCAP at this point approached the Ministry of Home Affairs. The ministry indicated that the Election Commission had been requested to include all legitimate Indian citizens in the rolls. The Election Commission however took no action. The People's Union for Civil Liberties (PUCL) and the CCRCAP filed a writ petition before the Delhi High Court in this regard (CWP no. 886 of 2000). In its judgement on 28 September 2000, the Delhi High Court ordered the registration of all eligible voters. This order, too, was flouted. Till date, not a single Chakma or Hajong has been included in the electoral rolls. Subsequently, the PUCL and CCRCAP filed a contempt petition (CWP 537 of 2001) before the Delhi High Court. The case is continuing.

The Central Government has often asserted that the Chakmas and Hajongs have a legitimate claim to Indian citizenship. As a member of the Opposition, the current Minister of Home Affairs, L K Advani, was exceptionally critical of the delay in granting citizenship and related rights and privileges to the Chakmas and Hajongs. He raised the issue in Parliament on several occasions. During his own tenure as Minister of Home Affairs, however, he has failed to get the Arunachal Pradesh government to comply with constitutionally binding judicial orders and directives from the Ministry of Home Affairs.

In December 1995,a Committee headed by the Prime Minister of India was constituted to look into the problem. This was followed by the formation of a sub-committee headed by the Home

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1 . Under Section 3(1)(a) of the Indian Citizenship Act 1955, every person born in India on or after 26 January 1950 and before 1 July 1987 is a citizen of the country.

Minister. On 6-7 March 1999, Home Ministry officials representing the sub-committee visited the Chakma and Hajong inhabited areas and submitted their report, containing specific recommendations, to the Home Minister. The Home Minister is yet to take any action on these recommendations.

The State Government has been steadily dismantling the basic social infrastructure in Chakma and Hajong settlements, rendering the communities even more vulnerable. All persons legally resident in India are entitled to ration cards if their income falls below a specified amount. In October 1991, the State Government discontinued the issuance of ration cards to the Chakmas and Hajongs, many of whom live in extreme poverty. In September 1994 the State Government began a campaign of closing schools, burning them down, or relocating them, effectively denying the Chakmas and Hajongs the right to education, now a fundamental right.

In 1999, the NHRC appointed a Special Rapporteur to investigate the plight of the Chakmas and Hajongs and the implementation of the Supreme Court judgement. Until today, no steps have been taken by the NHRC.

The CCRCAP has made various representations to the NHRC, urging it to take measures including the filing of a contempt petition for implementation of the Supreme Court judgement. The NHRC is yet to intervene.

Victims of human rights violations must, more often than not, go through a long and tortuous legal process before they get a ruling in their favour, if at all. The NHRC's disregard of the Supreme Court directions in this case not only raises doubts about its credibility, but also unnecessarily prolongs the victims' long-drawn struggle for justice. Its unwillingness to take action does not augur well for the protection of human rights in India.

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